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October 27, 2017

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Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination & Legal Administration
999 E Street, NW
Washington, DC 20463

Re: MUR 7273 – CONFIDENTIAL TREATMENT REQUESTED PER
52 U.S.C. § 30109(a)(12)(A)

Dear Mr. Jordan:

The undersigned represents Respondent Warner Bros. Records Inc. ("WBR") in the above-captioned MUR. This Response is submitted pursuant to 52 U.S.C. § 30109(a)(1) and 11 C.F.R. § 111.6 to address allegations in the Complaint filed against WBR by Common Cause and Paul S. Ryan (hereinafter "Complaint" or "Compl."). Confidential treatment of this Response is requested in accordance with 52 U.S.C. § 30109(a)(12)(A).

WBR denies the allegations in the Complaint. There is no reason to believe that WBR has violated or is likely to violate either the Federal Election Campaign Act (the "Act" or "FECA") or its implementing regulations. For the reasons set forth below, the Commission should dismiss the Complaint.

I. Background

WBR is a world-renowned record label. It discovers, markets, promotes, and distributes music from critically acclaimed artists, including Red Hot Chili Peppers, Andra Day, Michael Bublé, and Green Day. Declaration of Damian Elahi ¶ 3, attached hereto as Exhibit A (hereinafter "Elahi Decl."). After signing such artists to recording agreements, WBR assists them in creating and developing their music, in promoting their records and associated music careers, and in marketing their brand and presence as musical artists. *Id.* ¶ 5.

As part of WBR's relationship with the artists it represents, WBR frequently enters into separate merchandising agreements that give WBR the intellectual property, name/likeness, and other necessary rights to produce and sell artists' merchandise. *Id.* ¶ 6. These merchandising agreements call for regular accountings and payments of proceeds to artists from the sales of merchandise, and otherwise govern the relationship between WBR and its merchandising artists.

vis-à-vis branded merchandise. *Id.* ¶ 7. They also frequently give artists a right to approve or reject merchandise designed by WBR. *Id.* Pursuant to the terms of these agreements, WBR sells artist-branded merchandise on an online store on the WBR website, and also at artists' live performances. *Id.* ¶ 6. A wide variety of items from a wide variety of artists are available for purchase from WBR. *Id.* A visitor to WBR's online store could purchase, for instance, a Goo Goo Dolls t-shirt, a Michael Bublé wine glass, a My Chemical Romance doll, or a Tegan and Sara wristwatch, among numerous other items. *Id.*

WBR often follows its artists' creative direction in producing and selling particular items or lines of merchandise. *Id.* ¶ 8. While WBR retains the contractual right to independently design and manufacture merchandise (subject to artist approval), the process for producing merchandise may involve the artist submitting his or her own designs for merchandise. *Id.* WBR creates these items (sometimes using third-party vendors), manufactures the items using third-party vendors, and ultimately offers the items for sale on its online store and at concerts and events. *Id.*

Respondent Robert Ritchie ("Mr. Ritchie"), who is professionally known as "Kid Rock," is a former WBR exclusive recording artist and current WBR exclusive merchandised artist. *Id.* ¶ 9.¹ WBR promoted and distributed Mr. Ritchie's album "First Kiss," released in 2015; before that, Mr. Ritchie was associated for many years with WBR's sister label, Atlantic Records, which is also a subsidiary of Warner Music Group Corp. *Id.* Spurred on by the parties' association on "First Kiss," Mr. Ritchie and WBR entered into a merchandising agreement enabling WBR to sell Kid Rock merchandise.² *Id.* As with WBR's dealings with other merchandised artists, Kid Rock-branded merchandise is produced in close collaboration with Mr. Ritchie. *Id.* ¶ 11. Such dealings range from Mr. Ritchie consulting on or exercising approval rights regarding particular designs and items conceptualized or created by WBR, to Mr. Ritchie submitting or requesting particular items or designs. *Id.*

In July 2017, Mr. Ritchie requested that WBR create various items of merchandise bearing the text "Kid Rock For Senate." *Id.* ¶ 12.

There was no special process established or accommodation made for the production of Kid Rock For Senate merchandise, and the items were produced, marketed, and sold by WBR in essentially the same way as any other WBR-produced

¹ In the summer of 2017, by which time the First Kiss album's release cycle had ended, Mr. Ritchie announced that he had left WBR to sign with another label. However, WBR still produces and sells Kid Rock merchandise under the parties' merchandising agreement. Elahi Decl. ¶ 9.

² <http://kidrock.warnerbrosrecords.com/>.

item of Kid Rock-branded merchandise, such as Kid Rock's "Let's Get Shitfaced," "Kid Rock Cocky," or "U Never Met A Motherfucker Quite Like Me" merchandise. *Id.* ¶¶ 11, 14. Beginning on July 11, 2017, the Kid Rock For Senate merchandise was offered for sale on WBR's online store, and at Kid Rock concerts. *Id.* ¶ 14. The Kid Rock For Senate items are sold at prices commensurate with prices for other like Kid Rock merchandise on the WBR store, and with prices for equivalent merchandise items WBR sells for other merchandised artists. *Id.*

On July 12, 2017, Mr. Ritchie publicized that he was considering a campaign for one of Michigan's seats in the U.S. Senate. *See* Compl. ¶¶ 4-5; Elahi Decl. ¶ 15. In keeping with its usual practice regarding WBR merchandised artists, WBR did not endorse, support, or oppose Mr. Ritchie's contemplated candidacy. Elahi Decl. ¶ 16.

Mr. Ritchie created a website, www.kidrockforsenate.com, discussing his possible candidacy. *See* Compl. ¶¶ 4, 6. Until on or about October 24, 2017, that website indicated that Mr. Ritchie was "exploring [his] candidacy for US Senate," and that he would "be scheduling a press conference in the next 6 weeks or so to address this issue amongst others."³ Elahi Decl. ¶ 15. The www.kidrockforsenate.com website is neither owned nor operated by WBR. *Id.* WBR does not oversee the website's content, and WBR has no control whatsoever over the website. *Id.* The website does, however, link through to the Kid Rock For Senate merchandise for sale on WBR's online store. Compl. ¶ 16.

To date, WBR has not remitted any proceeds from the sale of Kid Rock For Senate merchandise to Mr. Ritchie, to the 501(c)(4) organization designated by Mr. Ritchie, or to any other person or entity. *Id.* ¶ 18.

WBR has not remitted and does not intend to remit any payments from the sale of Kid Rock For Senate merchandise to any political candidate or committee. *Id.* ¶ 21.

³ <https://www.kidrockforsenate.com/>.

On his own initiative, Mr. Ritchie placed a disclaimer on the www.kidrockforsenate.com website stating: "[M]oney raised at this time through the sale of merchandise associated with this very possible campaign will go toward our 'register to vote' efforts." *Id.* ¶ 19. Mr. Ritchie also requested that WBR place a similar disclaimer on the webpage where Kid Rock For Senate merchandise is available for purchase on WBR's online store, and on signage accompanying the sale of merchandise at concerts and musical performances. *Id.* WBR is using commercially reasonable good faith efforts to comply with those requests, and has placed the requested disclaimer on its website. *Id.* WBR's online store therefore states on the pages where Kid Rock For Senate merchandise is offered: "All proceeds go to voter registration efforts. This is not a political contribution."⁴ *Id.*

On October 24, 2017, Mr. Ritchie appeared on Howard Stern's SiriusXM radio program and stated that he would not be a candidate for the U.S. Senate. *Id.* ¶ 20. On or about October 24, 2017, the www.kidrockforsenate.com website was altered to remove Mr. Ritchie's message concerning his contemplated Senate campaign, and all discussion of Kid Rock For Senate merchandise also was removed (although a link to WBR's online store remains thereon). *Id.* A pop-up bar now appears on the www.kidrockforsenate.com website directing visitors to an announcement that the newest Kid Rock album is now available for pre-order. *Id.* WBR played no role in these changes to the www.kidrockforsenate.com website. *Id.*

Late on October 26, 2017, counsel for Mr. Ritchie informed counsel for WBR that Mr. Ritchie would like WBR to continue to offer Kid Rock For Senate merchandise for sale, but that after October 2017, the proceeds from the sale of such merchandise should go to Mr. Ritchie rather than to the 501(c)(4) organization designated by Mr. Ritchie to conduct voter registration efforts. *Id.* ¶ 21.

WBR will also supplement this Response to inform the Commission of how this issue is resolved.

II. Argument

WBR is a vendor in the ordinary course of business and its sale of "Kid Rock For Senate"-branded merchandise is entirely lawful under FECA and the Commission's regulations. The Complaint alleges that WBR violated two regulations: (1) 11 C.F.R. § 114.2(f)(1), which states that corporations are "prohibited from facilitating the making of contributions to candidates"; and (2) 11 C.F.R. § 110.6, which, along with 52 U.S.C. § 30118, prohibits a corporation from acting as a "conduit" for contributions earmarked to candidates for federal office. Neither allegation can stand.

⁴ <http://kidrock.warnerbrosrecords.com/senate/kid-rock-senate-t-shirt-6.html>.

First, 11 C.F.R. § 114.2(f)(1) is not violated because when WBR sells Kid Rock For Senate merchandise at the normal and usual charge for Kid Rock-branded merchandise and for artist-branded merchandise more generally, it is acting as a vendor in the ordinary course of business. The Commission's regulations explicitly provide that "[a] corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of its business as a commercial vendor . . . at the usual and normal charge." 11 C.F.R. § 114.2(f)(1). That is precisely the case here. WBR sells artist-branded merchandise as a matter of course. Just as WBR sells hats, t-shirts, and accessories for other artists, and just as WBR sells hats, t-shirts, and accessories for Kid Rock that bear messages other than "Kid Rock For Senate," so too WBR offers for sale, pursuant to the terms of a merchandising agreement, merchandise bearing a "Kid Rock For Senate" logo. Such activity falls squarely into the vendor in the ordinary course of business exception.

Second, 11 C.F.R. § 110.6 is not violated because WBR does not serve as a "conduit" under the meaning of that regulation. As an initial matter, WBR cannot be a conduit because it has not remitted, and has no plans to remit funds from the sale of Kid Rock For Senate merchandise to any political candidate or committee. Mr. Ritchie requested that WBR remit any proceeds from the sale of Kid Rock For Senate merchandise to date to a 501(c)(4) organization that supports voter registration efforts, and WBR intends to do so at the time such proceeds would otherwise be due to Mr. Ritchie pursuant to the terms of the merchandising agreement (in November 2017). Even if WBR did remit funds directly to Mr. Ritchie, however, WBR still would not be in violation of 11 C.F.R. § 110.6 because those funds are not earmarked for any "clearly identified" candidate. Mr. Ritchie has expressly disclaimed that he is a candidate for U.S. Senate. Accordingly, the Commission should find no reason to believe that WBR has violated or is about to violate FECA or any applicable regulations and should dismiss the Complaint.

A. WBR Has Not Violated 11 C.F.R. § 114.2 Because WBR Is Acting As A Vendor In The Ordinary Course Of Business When It Sells Kid Rock For Senate Merchandise.

The Commission's regulations provide that corporations "are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations and labor organizations." 11 C.F.R. § 114.2(f)(1). However, they specify a carve-out to that prohibition: "A corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of business as a commercial vendor in accordance with 11 C.F.R. part 116 at the usual and normal charge." *Id.*

Interpreting this carve-out, the Commission has explained that a "'commercial' vendor" is any person "providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or protection of those goods or services," AO 2007-04 (Apr. 20, 2007), 2007 WL 5172359, at *2 (quoting 11 C.F.R. § 116.1(c)), and that such a vendor

may earn money on such services that "would compensate the [vendor] for the costs it incurs . . . and also would provide the [vendor] with a reasonable profit," *id.* There is good reason for this carve-out. The Commission has "recognize[d] that entrepreneurial activity involving candidate-related merchandise is commonplace." AO 1989-21 (Nov. 17, 1989), 1989 WL 225184, at *4. If not for the exceptions eliminating liability for commercial vendors, virtually any company that contracts with or provides a service to a campaign would be in violation of the regulations.

WBR's sale of Kid Rock For Senate merchandise clearly was a provision of services in the ordinary course of business at the usual and normal charge. WBR is in the business of producing and selling merchandise branded with the names and logos of artists. *See* Elahi Decl. ¶ 6. WBR routinely produces and sells such merchandise pursuant to agreements that it enters into with many artists. *Id.* Merchandise is available on WBR's online store not just for Mr. Ritchie, but also for a variety of other current and former WBR artists. *Id.*

WBR's production and sale of Kid Rock For Senate merchandise was entirely in keeping with its usual practices. As a matter of course, Mr. Ritchie—like other artists—provided WBR with ideas for merchandise, which WBR produced and placed for sale on its online store. *Id.* ¶ 11. The process by which Kid Rock For Senate merchandise was produced was essentially the same process as for any other Kid Rock-branded merchandise produced by WBR. *Id.* ¶ 14. Just as it does whenever it produces any artist-branded merchandise, WBR designed and manufactured the merchandise, and offered it for sale at prices commensurate with the prices for other, comparable merchandise. *Id.* ¶¶ 12, 14. WBR has borne the exact same kinds of costs as it does whenever it produces other Kid Rock-branded merchandise, and the allocation of costs and revenues from the sale of Kid Rock For Senate merchandise is no different than the allocation of costs and revenues from the sale of other Kid Rock-branded merchandise. *Id.* ¶ 14.

WBR also clearly qualifies under all four factors the Commission has identified for an individual to qualify as a "commercial vendor" in the context of the manufacture and sale of political merchandise: "(1) whether the activity is engaged in by the vendor for genuinely commercial purposes and not for the purpose of influencing an election; (2) whether the sales of merchandise involve fundraising activity for candidates (*e.g.*, resulting in the transfer of proceeds to candidates) or solicitations for political contributions; (3) whether the items are sold at the vendor's usual and normal charge; and (4) whether the purchases are made by individuals for their personal use" AO-2008-10 (Oct. 24, 2008), 2008 WL 4754871, at *5 (citing AO-1994-30 (Oct. 28, 1994), 1994 WL 670862, at *4).

- First, WBR's sale of merchandise is purely commercial, and WBR has no purpose or intent in influencing any election. WBR is not a partisan entity and does not support or oppose candidates for public office. Elahi Decl. ¶ 4. WBR never endorsed, supported, or opposed Mr. Ritchie's contemplated candidacy for U.S. Senate. WBR's dealings in and with Kid Rock For Senate merchandise were simply WBR's production and sale of artist merchandise in WBR's ordinary course

of business. WBR's dealings with Kid Rock for Senate merchandise and associated conduct were neither an endorsement of Mr. Ritchie's contemplated candidacy nor any attempt to support or influence anything or anyone in any way regarding it. *Id.* ¶ 16.

- Second, WBR's sale of merchandise does *not* involve fundraising activity or solicitations. WBR has no intent to transfer the proceeds to any candidate or candidate committee. Pursuant to Mr. Ritchie's request, Mr. Ritchie's share of the proceeds from the sale of Kid Rock For Senate merchandise to date are to be remitted to a 501(c)(4) organization for voter registration efforts. *Id.* ¶ 17. As to any future sales, WBR has not and does not plan to remit proceeds from the sale of "Kid Rock For Senate" merchandise to any political candidate or campaign committee. *Id.* ¶ 18.
- Third, the Kid Rock For Senate merchandise is being sold at usual prices for similar merchandise, and WBR will allocate costs and distribute revenues in the same way and according to the same schedule that it does with all other Kid Rock-branded merchandise (with the exception of honoring Mr. Ritchie's request that Mr. Ritchie's share of the proceeds from the sale of merchandise to date go to the 501(c)(4) organization he has designated for their receipt). *Id.* ¶¶ 14, 17-18.
- Fourth, it is likely that purchases of Kid Rock For Senate merchandise—which consists solely of t-shirts, hats, and yard signs—are being made by individuals for their personal use.

Indeed, WBR's activities here closely resemble activities that the Office of the General Counsel and the Commission have previously indicated qualify as protected commercial activity. *See, e.g.*, AO 1994-30 (Oct. 28, 1994), 1994 WL 670862, at *4 (indicating that entity whose principal business was the manufacture, advertising, and sale of political merchandise, such as hats and bumper stickers, was a commercial vendor and did not make a prohibited expenditure or contribution by selling those items); First General Counsel's Report, MUR 5485, at 8-9 (Oct. 25, 2005) (concluding that software company that created "bot" which stated its dislike of political candidate was a commercial vendor because "[its] principal business [was] creating and developing conversational software, and because the bot was "designed for genuinely commercial purposes rather than to influence a federal election").⁵

⁵ Other relevant factors here may include "whether the entities: (1) were owned, controlled, or affiliated with a candidate or political committee; (2) were 'in the business' of conducting the type of activity involved; and (3) followed usual and normal business practices and industry standards." AO-2008-10 (Oct. 24, 2008), 2008 WL 4754871, at *5. These factors also favor WBR. WBR is not owned, controlled, or affiliated with any candidate or political committee. Elahi Decl. ¶ 4. WBR is in the business of distributing artist-branded merchandise, and WBR has followed its usual business practices in offering Kid Rock For Senate merchandise for sale. *Id.* ¶¶ 6, 12-14. Separately, "[i]n advisory opinions involving contribution processing services by corporations," the Commission has

Accordingly, WBR is a vendor within the ordinary course of business and could not have violated 11 C.F.R. § 114.2.

B. WBR Has Not Violated 11 C.F.R. § 110.6 And 52 U.S.C. § 30118 Because It Has Not Served As A "Conduit" For Funds Earmarked For A Political Candidate.

WBR also has not served as a conduit for funds in violation of 11 C.F.R. § 110.6 or 52 U.S.C. § 30118. The Complaint's allegations fail because WBR has not forwarded any contributions to any political candidate or campaign committee and has no intention to do so, and also because proceeds from the sale of Kid Rock For Senate merchandise are not earmarked for a political candidate.

i. WBR Is Not A Conduit Because It Is Not Forwarding Contributions To A Political Candidate Nor The Committee Of A Political Candidate.

11 C.F.R. § 110.6 and 52 U.S.C. § 30118 provide that a corporation is "prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees." 11 C.F.R. § 110.6(b)(ii). The regulation further defines a conduit as "any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(2); *see also* AO 1996-18 (June 14, 1996), 1996 WL 341161, at *2 ("The activity addressed in [11 C.F.R. § 110.6] involves *receiving and forwarding* contributions that the individual contributors have earmarked for specific Federal candidates or their authorized campaign committees." (emphasis added)). WBR could not have served as a conduit because it has not "forwarded" any contributions to any political candidate or committee and has no intention of doing so.

At this time, no proceeds from the sale of Kid Rock For Senate merchandise have been remitted to anyone. Elahi Decl. ¶ 18. In accordance with the regular schedule for the accounting of merchandise sales for all Kid Rock merchandise, proceeds are due to Mr. Ritchie in November 2017 from all third-quarter sales. *Id.* However, pursuant to a request from Mr. Ritchie, proceeds from the sale of Kid Rock For Senate merchandise through October 2017 are supposed to go to a 501(c)(4) organization engaged in voter registration efforts. *Id.* ¶¶ 17-18. Because WBR has not and does not plan to remit any funds to any political candidate or candidate campaign committee,

considered other criteria, such as whether the contributions are forwarded through separate merchant accounts. AO 2014-09 at 4 n.5 (Aug. 14, 2014). Those criteria are not applicable here because WBR is not a commercial fundraising firm, "is not handling the forwarding of [money] as contributions," *id.*, and—indeed—is not forwarding money to any candidate or committee at all, *see* Elahi Decl. ¶¶ 17-18.

it cannot possibly be a conduit. The Complaint's allegations under Section 110.6 and 52 U.S.C. § 30118 therefore fail at the outset.

ii. WBR Is Not In Violation Of 11 C.F.R. § 110.6 Because Kid Rock Merchandise Proceeds Are Not Earmarked Contributions.

However, even if WBR remitted Kid Rock For Senate merchandise proceeds directly to Mr. Ritchie, WBR still would not be in violation of 11 C.F.R. § 110.6 and 52 U.S.C. § 30118 because those proceeds are not earmarked political contributions. As discussed above, for an individual to be a conduit, the individual must have received and forwarded contributions that are "earmarked." 11 C.F.R. § 110.6(b)(2). A contribution is earmarked according to the regulation only if it bears "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a *clearly identified candidate* or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1) (emphasis added).

As case law makes clear, a solicitation of funds cannot result in earmarked contributions unless it identifies "that it is for the benefit of a certain, specified candidate." *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1472 (D.C. Cir. 1992). Otherwise, there can be no "clearly identified candidate" on contributions responsive to the solicitation and thus no violation of 11 C.F.R. § 110.6. For example, in *Common Cause v. FEC*, 729 F. Supp. 148 (D.D.C. 1990), the court concluded that contributions sent in response to solicitation mailings were not "earmarked" within the meaning of 11 C.F.R. § 110.6(b) because the mailings did not specify particular candidates to which donations would be given, and individual donors "intended to give to the [National Republican Senatorial Committee] for use in its discretion." *Common Cause*, 729 F. Supp. at 152.

In this case, there is no "clearly identified candidate" indicated to purchasers of Kid Rock For Senate merchandise and proceeds from such merchandise therefore cannot be earmarked within the meaning of the regulation. WBR's online store has made clear to purchasers that proceeds from the sale of Kid Rock For Senate merchandise would not be used to support Mr. Ritchie's contemplated campaign for the U.S. Senate, nor any other political campaign. At this time, when a visitor to WBR's online store clicks on a "Kid Rock For Senate" item, he/she proceeds to a screen displaying information about the item, which includes the following text: "All proceeds go to voter registration efforts. This is not a political contribution." See Screenshots of WBR's online store, attached hereto as Exhibit B.⁶

⁶ Until Mr. Ritchie's announcement that he would not be a candidate for the U.S. Senate, a similar statement appeared on the www.kidrockforsenate.com website, operated by Mr. Ritchie. Elahi Decl. ¶ 19. That statement remains publicly available on the Kid Rock blog, at <https://kidrock.com/blog/announcement/448202/when-my-name-was-thrown-out-there-for-us-senate>. *Id.* ¶ 20 n.3.

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Additionally, there is no information on Kid Rock For Senate merchandise that would clearly identify Mr. Ritchie such that proceeds from such merchandise would be earmarked to him. Federal law specifies three ways in which a candidate may be "clearly identified": (i) "the name of the candidate involved appears;" (ii) "a photograph or drawing of the candidate appears," or (iii) "the identity of the candidate is apparent by unambiguous reference." 52 U.S.C. § 30101(18). Undisputedly, none of the Kid Rock For Senate merchandise available on WBR's online store includes Mr. Ritchie's name or picture. *See, e.g., Compl. Exs. 1, 4.*

While the merchandise does use Mr. Ritchie's professional name, "Kid Rock," that is not an unambiguous reference to Mr. Ritchie. As courts have made clear, an unambiguous reference to a candidate exists only if "the identity of the . . . candidate would be apparent, i.e., clear to a reasonable, objective person viewing the advertisement in the context of the reference." *Hispanic Leadership Fund, Inc. v. FEC*, 897 F. Supp. 2d 407, 427 (E.D. Va. 2012). "Kid Rock" is a professional name. While it is known to the many members of the public, the connection between "Kid Rock" and Robert Ritchie—the name Mr. Ritchie would be required to use to run for Senate pursuant to Michigan law, *see* M.C.L.A. 168.560b(2), (4)—is not presently well-known, and is not clear to members of the public. A reasonable, objective person without any background in the music industry would not recognize that Mr. Ritchie and Kid Rock are the same personage.⁷

Finally, even if the Commission were to conclude that there is an unambiguous reference to Mr. Ritchie on the merchandise, there still would not be a clearly identified candidate in this circumstance because Mr. Ritchie never declared his candidacy for the U.S. Senate, and in fact has now explicitly stated that he will not be a candidate. *See* Elahi Decl. ¶¶ 15, 20. Even prior to his announcement on or about October 24, 2017 that he would not be a candidate, Mr. Ritchie expressly and repeatedly stated that he was unsure whether he intended to run. *See* Compl. ¶ 12. Regardless of whether these activities ever took Mr. Ritchie outside the "testing the waters" exception under 11 C.F.R. §§ 100.72, 100.131, at no time was Mr. Ritchie "clearly identified" as a candidate. Accordingly, the proceeds from Kid Rock For Senate merchandise could not be "earmarked" under 11 C.F.R. § 110.6 and WBR could not have served as a conduit in violation of that provision or 52 U.S.C. § 30118.

⁷ This situation is different than one involving a communication with a candidate's "nickname," which may qualify as an unambiguous reference to the candidate. *See* 11 C.F.R. § 100.29(b)(2). A nickname, unlike a stage name, is understood by the public as synonymous with the individual's actual name.

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For the foregoing reasons, WBR respectfully requests that the Commission dismiss the Complaint and take no further action.

Dated: October 27, 2017

Respectfully submitted,



Jessica Ring Amunson
*Attorney for Respondent Warner
Bros. Records Inc.*

Enclosures

100074740001

Exhibit A

**DECLARATION OF DAMIAN ELAHI
VICE PRESIDENT, BUSINESS AFFAIRS
WARNER BROS. RECORDS INC.**

I, Damian Elahi, hereby declare:

1. I am an employee of Warner Bros. Records Inc. ("WBR"), a subsidiary of Warner Music Group Corp. I have been employed at WBR since April 2009, initially as Senior Director of and subsequently as Vice President of Business Affairs.

2. Before my WBR employment, I was employed as Business Affairs Counsel at Interscope Records (a division of Universal Music Group) and before that at Ventura Distribution/First Look Studios, preceded by a transactional entertainment legal practice at a law firm. My job responsibilities at WBR primarily entail negotiating, drafting, amending, overseeing, and also advising WBR personnel regarding various artist recording agreements, artist merchandising agreements, and certain artist non-record entertainment activities agreements, including those of numerous best-selling artists.

3. WBR is a world-renowned record label. WBR discovers, markets, promotes, and distributes music from critically acclaimed artists, including Linkin Park, Red Hot Chili Peppers, Andra Day, Michael Bublé, Neil Young, and Green Day. WBR's catalog includes legendary artists such as Prince, Miles Davis, Tom Petty, The Ramones, and Madonna.

4. WBR is a non-partisan organization, and is not owned, controlled, or affiliated with any candidate or political committee. While WBR takes pride in its current and former artists and their accomplishments in the music and associated industries, WBR does not endorse, support, or oppose candidates for public office, nor does WBR take positions on any of its artists' completed, aspired, or actual campaigns in pursuit of public office.

5. WBR is known for building multifaceted working relationships with its roster of signed recording artists. After signing such artists to recording agreements, WBR assists them in creating and developing their music, in promoting their records and associated music careers, and in marketing their brand and presence as musical artists.

6. WBR also signs many artists to separate merchandising agreements, under which WBR has the right to produce and sell such artists' merchandise directly and via third parties online, at live performances, and through other outlets. A visitor to WBR's online store could purchase, for example, a Green Day t-shirt, a Michael Bublé wine glass, a My Chemical Romance doll, and a Tegan and Sara wristwatch, among numerous other items for a variety of WBR merchandised artists.

7.

8. WBR often follows its artists' creative direction in producing particular items or lines of merchandise. The process for producing merchandise may involve the artist submitting his or her own designs, or WBR may produce merchandise in consultation with its artists or using its or its artists' ideas or designs. WBR creates these items (sometimes using third-party vendors), manufactures them through third-party manufacturers, and ultimately offers the items for sale on its online store and at concerts and events.

9. Robert J. Ritchie, professionally known as "Kid Rock," is a former WBR exclusive recording artist and a current WBR exclusive merchandised artist. WBR began its association with Mr. Ritchie to release his 2015 album "First Kiss." (For reference, Mr. Ritchie's albums dating back to 1998 were released by Atlantic Records, which is also a subsidiary of Warner Music Group Corp.) Spurred by the parties' association on "First Kiss," Mr. Ritchie and WBR also entered into a merchandising agreement enabling WBR to produce and sell Kid Rock merchandise. In the summer of 2017, by which time the First Kiss album's release cycle had ended, Mr. Ritchie announced that he had left WBR to release his newly recorded music through another record company. However, WBR still produces and sells Kid Rock merchandise under the parties' merchandising agreement.

10.

11. As with WBR's dealings with its other merchandised artists, Kid Rock merchandise is produced under the parties' merchandising agreement in close collaboration with Mr. Ritchie. Such dealings in practice range from Mr. Ritchie consulting on or exercising approval rights regarding particular designs and items conceptualized or created by WBR to Mr. Ritchie submitting or requesting particular items or designs. Examples of such Kid Rock merchandise include a pint glass bearing the text "Let's Get Shitfaced," a t-shirt bearing the text "U Never Met A Motherfucker Quite Like Me," a t-shirt bearing the text "Kid Rock Cocky," and a hoodie bearing the text "Kid Ma-Fucking Rock."

12. On February 27, 2017, Mr. Ritchie requested that WBR create various items of merchandise bearing the text "Kid Rock For Senate." WBR complied with the request in keeping with its general practice of following its artists' direction to create particular merchandise. WBR commissioned design of a "Kid Rock For Senate" logo, obtained approval of the design from Mr. Ritchie, and had the requested items produced, using the same practices WBR uses for the design and production of other Kid Rock merchandise.

**SUBMITTED IN SUPPORT OF MUR 7273
CONFIDENTIAL TREATMENT REQUESTED
PER 52 U.S.C. § 30109(a)(12)(A)**

13. On July 11, 2017, WBR began offering Kid Rock For Senate merchandise for sale on its online store and at Kid Rock concerts. To the best of my knowledge and belief, customers are purchasing Kid Rock For Senate merchandise to use as they would use any other Kid Rock merchandise.

14. WBR produced, marketed, and sold all Kid Rock For Senate merchandise under the parties' merchandising agreement in the same manner as WBR produces, markets, and sells all other Kid Rock-branded merchandise. WBR took on the usual costs that it takes on when producing and selling other merchandise. There was no special process established or accommodation made for the production of Kid Rock For Senate merchandise, and the items were produced, marketed, and sold by WBR in essentially the same way as any other WBR-produced item of Kid Rock-branded merchandise. WBR's prices for Kid Rock For Senate merchandise are commensurate with the prices WBR charges consumers for like items of other Kid Rock-branded merchandise, and with equivalent merchandise items for other WBR merchandised artists.

15. On July 12, 2017, Mr. Ritchie publicized that he was considering a campaign to run for one of Michigan's U.S. Senate seats. Mr. Ritchie created the website www.kidrockforsenate.com discussing his possible candidacy. Until on or about October 24, 2017, the website stated that Mr. Ritchie was "exploring [his] candidacy for US Senate," and that he would "be scheduling a press conference in the next 6 weeks or so to address this issue amongst others." The website further stated that Mr. Ritchie would be selling merchandise related to his contemplated campaign, and it included a link to Kid Rock-branded merchandise for sale on WBR's online store. The www.kidrockforsenate.com website is neither owned nor operated by WBR. WBR does not oversee the website's content, and WBR has no control whatsoever over the website.

16. In keeping with its usual practice for WBR merchandised artists, WBR never endorsed, supported, or opposed Mr. Ritchie's contemplated candidacy. WBR never planned to, and would not do so. In actuality, WBR's dealings in and with Kid Rock For Senate merchandise were simply WBR's production and sale of artist merchandise in WBR's ordinary course of business. WBR's dealings and associated conduct were neither an endorsement of Mr. Ritchie's contemplated candidacy nor any attempt to support or influence anything or anyone in any way regarding it.

17.

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18044436876

18.

19. On his own initiative, Mr. Ritchie placed a disclaimer on the www.kidrockforsenate.com website stating: "[M]oney raised at this time through the sale of merchandise associated with this very possible campaign will go toward our 'register to vote' efforts." Thereafter Mr. Ritchie requested that WBR place a similar disclaimer on WBR's online store where Kid Rock For Senate merchandise is offered for sale, and on signage accompanying WBR-controlled sales of merchandise at Kid Rock concerts. WBR is using commercially reasonable good faith efforts to comply with those requests, and has placed the requested disclaimer on its online store. When a visitor to WBR's online store clicks on a "Kid Rock For Senate" item, he/she proceeds to a screen displaying information about the item, which includes the following text: "All proceeds go to voter registration efforts. This is not a political contribution."¹

20. On October 24, 2017, Mr. Ritchie appeared on Howard Stern's SiriusXM radio program and stated that he would not be a candidate for the U.S. Senate. On or about October 24, 2017, the www.kidrockforsenate.com website was altered to remove Mr. Ritchie's message concerning his contemplated Senate campaign. All discussion of Kid Rock For Senate merchandise also was removed therefrom (although the link to WBR's online store remains thereon).² A pop-up bar now appears on the www.kidrockforsenate.com website directing visitors to an announcement that the newest Kid Rock album is now available for pre-order. WBR played no role in these changes to the www.kidrockforsenate.com website.

21. Late on October 26, 2017, counsel for Mr. Ritchie informed counsel for WBR that Mr. Ritchie would like WBR to continue to offer Kid Rock For Senate merchandise for sale, but that after October 2017, the proceeds from the sale of such merchandise should go to Mr. Ritchie rather than to the 501(c)(4) organization previously designated by Mr. Ritchie.

WBR has not remitted and does not intend to remit any payments from the sale of Kid Rock For Senate merchandise to any political candidate or committee.

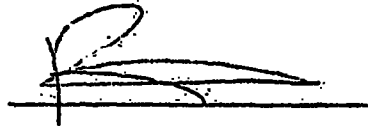
¹ <http://kidrock.warnerbrosrecords.com/senate/kid-rock-senate-t-shirt-6.html>.

² Mr. Ritchie's statement regarding the proceeds from the sale of Kid Rock For Senate merchandise remains publicly available on the Kid Rock blog, at <https://kidrock.com/blog/announcement/448202/when-my-name-was-thrown-out-there-for-us-senate>.

**SUBMITTED IN SUPPORT OF MUR 7273
CONFIDENTIAL TREATMENT REQUESTED
PER 52 U.S.C. § 30109(a)(12)(A)**

**I declare under penalty of perjury (under the laws of the United States of America) that
the foregoing is true and correct to the best of my knowledge.**

Dated: October 27, 2017

A handwritten signature in black ink, appearing to read 'Damian Elahi', is written over a horizontal line.

Damian Elahi

188044451878

Exhibit B

18044453879

KID  — FOR —
ROCK18 US SENATE

US SENATE

US SENATE

NEW ALBUM MUSIC APPAREL ACCESSORIES SENATE SALE



KID ROCK FOR SENATE T-SHIRT

Availability: In stock

\$24.99

[Get the full story on this product](#)

Size

Qty:

ADD TO CART

[+ ADD TO WISHLIST](#)



[VIEW LARGER](#)

DETAILS

Kid Rock for US Senate Unisex T-shirt 100% cotton slim fit t-shirt; color Black.
Made in the USA

All proceeds go to voter registration efforts. This is not a political contribution.

18044453880

KID ROCK FOR US SENATE

ENTER CODE (if any) DISCOUNT

SEARCH

NEW SLIM-FIT DESIGN, AVAILABLE IN MEN'S, WOMEN'S, & KID'S SIZES



KID ROCK FOR US SENATE T-SHIRT

Availability: In stock

\$24.99

[Be the first to review this product](#)

Size:

Qty:

ADD TO CART

+ ADD TO WISHLIST



VIEW LARGER

DETAILS

Kid Rock for US Senate Unisex T-shirt

100% cotton slim fit t-shirt, color white, Made in the USA

All proceeds go to voter registration efforts. This is not a political contribution.

18004446666

KID  FOR
ROCK 18 US SENATE

 [LINK TO SETUP](#) [CHECKOUT](#) 



[NEW ALBUM](#) [MUSIC](#) [APPAREL](#) [ACCESSORIES](#) [EVENTS](#) [PRIVATE SALE](#)

KID ROCK FOR US SENATE YARD SIGN

[Subscribe to be the first to know when this item is back in stock](#)

[Sign up](#)
[Email address](#)

SUBSCRIBE

Availability: Out of stock

\$15.99

[Be the first to know when this product is back in stock](#)

DETAILS

Kid Rock for US Senate Yard Sign

22" x 28" white yard sign with wire frame included, Please Note: This item ships separately

[VIEW LARGER](#) 

All proceeds go to voter registration efforts. This is not a political contribution.



KID  — FOR —
ROCK18 US SENATE

 [HOME](#) [ABOUT](#) [CONTACT](#) [FAQ](#)

SEARCH

1-800-444-4444



KID ROCK FOR US SENATE HAT

Availability: In stock

\$15.99

[Be the first to review this product](#)

Qty:

ADD TO CART

[+ ADD TO WISHLIST](#)

DETAILS:

Kid Rock for US Senate Hat

[VIEW LARGER](#) :: One Size Fits All Red/White/Blue hat with adjustable back,
All proceeds go to voter registration efforts. This is not a political contribution.

18044456884

KID  FOR
ROCK 18 US SENATE

SEARCH

NEW ALBUM MUSIC APPAREL ACCESSORIES EVENTS SPECIALS

KID  FOR
ROCK 18 US SENATE

KID ROCK FOR US SENATE STICKER

Subscribe to be the first to know about new products.

Enter your email address

SUBSCRIBE

Availability: Out of stock

\$4.99

Be the first to review this product.

0 0 0 0

DETAILS

Kid Rock For US Senate Bumper Sticker

10"x3" full color gloss sticker with easy peel backing. Weather-resistant and made in the USA.

VIEW LARGER ::

All proceeds go to voter registration efforts. This is not a political contribution.